

U.S. Department
of Transportation

United States
Coast Guard



CERTIFIED MAIL - RETURN RECEIPT

Commander,
Ninth Coast Guard District

1240 E. Ninth St.
Cleveland, Ohio 44199
Staff Symbol: (d j)
Phone: (216) 522-2086

13 January 1984

16460/1.1
MEP CASE #09-1114/83
UCN: V-83-303-JP

The Flood Company
1213 Barlow Road
Hudson, OH 44236

Gentlemen:

I have received a report alleging that, in violation of section 311 (b)(3) of the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. 1321(b)(3), a discharge of oil, in a quantity which may be harmful, occurred on 20 May 1983 from your facility. If these allegations are proven, as the owner or operator of the discharging facility, section 311 (b)(6) of the Act provides that you shall be assessed a civil penalty in an amount not to exceed \$5,000.00

This letter is to notify you of the initiation of civil penalty proceedings and to offer you the opportunity for a hearing on the matter. If you request a hearing, the request must be in writing to me, and must specify the issues that are in dispute. Failure to specify a nonjurisdictional issue will preclude its consideration. You may amend the specification of issues in dispute any time up to 10 days before the scheduled hearing. Issues raised less than 10 days before the scheduled hearing may be presented only at the discretion of the hearing officer. You retain this right to a hearing until the actual assessment of a penalty.

If you request a hearing, one will be conducted in accordance with 33 CFR Subpart 1.07, which is enclosed for your information. At the hearing you may submit any relevant materials or testimony you wish to have considered. If you request a hearing, which will be held in my office, I will confirm the scheduling with you by telephone or in writing at a later date. If you do not wish to have a hearing, you may submit written evidence or arguments you wish me to consider in lieu of a hearing. Relevant matters would include evidence that no violation was committed, or which would tend to mitigate the gravity of the offense.

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Fault, negligence, or culpability are not elements in determining whether or not there has been a violation, but may be considered in evaluating the gravity of an offense. In determining the size of any civil penalty which may be assessed, I am required to consider the appropriateness of the penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation. In presenting your case at a hearing, or in submitting information in lieu of a hearing, you may submit information relevant to these points.

You have the right to be represented at all stages of the proceedings by counsel. If I receive notification that you are represented by counsel, I will thereafter direct all communications concerning the case to that counsel.

I have not yet made any penalty assessment in this case, and I will not do so until you have had the opportunity to present your side of the case, and you have been found liable for the violation. To assist you in evaluating my view of this case and in planning your further actions, 33 CFR 1.07-20 requires that I advise you of the amount of penalty which appears to be appropriate, on the basis of the information presently before me. In this case, that amount is \$100.00. I wish to emphasize that this is not a penalty assessment, but rather advice provided for your assistance.

If you do not desire to avail yourself of your right to a hearing or to submit a written statement, you may pay the preliminarily determined \$100.00. Payment should be made by check or money order payable to the "U. S. Coast Guard" and sent with the enclosed copy of this letter to: Commander (fac), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199, marked for the attention of the "COLLECTION CLERK". To insure proper handling, please include the above referenced case number on the face of your check or money order.

I am enclosing a copy of this case file upon which I made my preliminary assessment. Photographs are available for your inspection at my office, or copies will be made available to you at the cost of \$2.00. If you have any questions concerning the procedures, requirements of the regulations, or details of the violation, you may contact me at the above address or call me at (216) 522 2086. However, to be properly considered by me, any evidence must be submitted to me in writing.

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If you fail to respond within 30 days of receipt of this notice, you may forfeit your right to a hearing. At that time, I may presume you do not wish a hearing, and can assess the penalty I have preliminarily determined to be appropriate. Therefore, I urge your prompt attention.

Sincerely,

F. H. TAYLOR
Hearing Officer

Encl: (1) Entire Case Record
(2) Enforcement; Civil and Criminal Proceedings - Subpart
1.07-1 thru 1.07-95

Copy: Collection Clerk
EPA Region V